



The Chartered
Governance
Institute

Withdrawal or amendment of dividend resolution to Annual General Meeting

Guidance note

Withdrawal or amendment of dividend resolution to Annual General Meeting

Due to the unprecedented impact of COVID-19 on businesses, many companies will be considering that there is a need for prudent cash management at this time. The Board may therefore conclude that it is no longer appropriate to recommend or declare a dividend that is due to be put to shareholders for approval at the Annual General Meeting. Alternatively, Boards may conclude that a dividend should still be paid but the amount of the dividend should be reduced.

Acknowledgement

This guidance note has been prepared with the assistance of Slaughter and May and members of The Chartered Governance Institute.

If you have any feedback on the content of these resources, or additional questions that you'd like to discuss, please contact the ICSA information centre: **020 7612 7035** | informationcentre@icsa.org.uk

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Withdrawal or amendment of dividend resolution to Annual General Meeting

1. What can a company do if it wishes to withdraw or amend its dividend resolution?

Companies should check their articles of association (Articles) for provisions in relation both to final dividends and to the procedure for withdrawing or amending resolutions. However, it is very common for the Articles to permit shareholders to approve a final dividend only up to the amount recommended by directors. This means that, if the Board changes its dividend recommendation in light of new circumstances, the company may withdraw or amend its dividend resolution accordingly. The company may do so at any time prior to the resolution being put to the AGM.

The considerations will be different for those companies which opt to pay interim dividends in lieu of a final dividend as a matter of policy, since they will have greater flexibility from a legal perspective to determine the timing of any announcement of an interim dividend and to cancel or modify the quantum and/or payment terms of any such interim dividend thereafter.

If the Notice of Meeting has not yet been published, the resolution recommending or declaring a final dividend should simply be removed or amended before publication.

If the Notice of Meeting has been published and the Board decides to withdraw or amend the dividend resolution, the company should notify shareholders accordingly and explain the reasons the resolution is being amended or withdrawn. Listed companies should notify shareholders by way of a stock exchange announcement.

If the Board decides to withdraw or amend a resolution at a late stage, the Chair has discretion to allow this at any time before the resolution is put to the meeting. The Chair should explain to the meeting the reasons for the withdrawal or amendment of the resolution. Shareholders should still be notified and listed companies should release a stock exchange announcement.

If the Annual General Meeting has been held and a resolution to declare a final dividend has been passed by shareholders, the dividend becomes a debt payable to shareholders. The debt is enforceable from, and the dividend becomes due and payable on, the date on which it is stated as payable in the resolution (unless there are restrictions on enforceability in the Articles). Companies therefore cannot withdraw or amend final dividends after they have been declared by shareholders.

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2. If the resolution is being amended to reduce the dividend after proxy votes have been submitted, how should proxy votes be treated?

The Companies Act requires the proxy to vote in accordance with any instructions given by the member to whom the proxy is appointed. Where no instruction has been given in relation to a resolution, proxies have discretion as to how to vote. If the resolution has been amended prior to being put to the meeting, the proxy should aim to give effect to what the proxy would have wanted if faced with the amended resolution. In practice, this is likely to mean voting in favour of the amended dividend resolution where instructed to vote in favour of the original dividend resolution (and vice versa).

3. Does the stock exchange announcement in these circumstances need to say it contains inside information (under MAR)?

The company's advisers should be consulted but we would expect that a decision to withdraw or amend the dividend is likely to constitute inside information.

4. If the company is withdrawing or reducing the dividend, should the stock exchange announcement make some sort of trading update at the same time?

There is no specific legal requirement to do so, however, many companies are giving a general update as background to why the board has taken the decision to withdraw or reduce the dividend.

5. Are there any other considerations?

Companies should, where possible, speak to their advisers in order to assess what opportunities are open to them, given their particular dividend payment practice, the expectations of their shareholders and what their particular Articles provide.

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